

FORM TO BE USED BY A PERSON FILING A MOTION TO VACATE,  
SET ASIDE, OR CORRECT A SENTENCE UNDER 28 U.S.C. § 2255

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ENTERED  
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SEP 19 2013

CLERK U.S. DISTRICT COURT  
DISTRICT OF MARYLAND  
DEPUTY

Kevin Wayne Gary

October 1981

43319-037

P.O. Box 1009

Welch, WV 24801

(Full name, date of birth, identification  
number and address of movant)

Criminal Case No.: WDQ-08-86

Civil Action No.: WDQ-13-2778  
(Leave blank. To be filled in by Court.)

v.

UNITED STATES OF AMERICA

**MOTION TO VACATE, SET ASIDE, OR CORRECT SENTENCE**

1. Name and location of the court which entered the judgment/conviction being challenged.

U.S. District Court-Maryland 101 Lombard St. Balto. Md. 21201

2. Date of judgment or sentencing.

March 27, 2009 1:02 p.m. to 1:37 p.m.

3. Length of sentence.

360 Months

4. Nature of offense (all counts).

Conspiracy to Participate in a Racketeering Enterprise

5. What was your plea? (check one)

(a) Not Guilty

☐

(b) Guilty

☒

(c) Nolo Contendere

☐

If you entered different pleas to different counts or charges, explain.

6. Kind of trial. (check one)

(a) Jury

☐

(b) Judge Only

☐

7. Did you testify at the trial?

Yes ☐

No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐

No ☐

If you answered yes, provide the following information:

A. What grounds did you raise?

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B. What was the result?

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C. What was the date of the decision by the Court of Appeals?

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9. Did you file a petition for writ of certiorari to the United States Supreme Court?

Yes ☐ No ☒

If you answered yes, what was the result?

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If you answered yes, what was the date of the decision by the Supreme Court?

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10. Other than a direct appeal, have you filed any petitions, applications, or motions challenging this judgment in any federal court?

Yes ☐ No ☒

11. If you answered yes, provide the following information for **each** petition, application, or motion:

A. Name and location of the court where you filed.

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B. Describe what you filed and the date on which it was filed.

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C. What grounds did you raise?

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D. What was the result?

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E. What was the date of the decision?

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F. Did you appeal the decision?

Yes ☐

No ☐

G. What was the result?

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H. If you did not appeal any adverse decision, explain why you did not appeal.

Because I wasn't aware of how the career offender  
enhancement worked until the Simmons law was passed.

12. Do you CURRENTLY HAVE PENDING in any court any motion, petition, or appeal concerning the judgment being challenged in this petition?

Yes ☐

No ☒

If you answered yes, describe what you filed, when, where, and its current status.

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13. In most cases federal law requires that a motion to vacate or set aside judgment be filed within one (1) year of the date your conviction became final. 28 U.S.C. § 2255. If this motion is being filed more than one year after your conviction became final, explain why it is late and/or why you believe the one year limitations period does not apply.

The United States vs. Jason Edward Simmons' case was  
just decided on. I believe it applies to me.

14. State BRIEFLY every ground on which you claim you are being held unlawfully. BRIEFLY summarize the facts supporting each ground. If necessary, you may attach additional pages.

A. Ground One: Career Offender

Supporting Facts: I was careered on a ~~rob~~ ~~robbery~~ robbery charge  
that I only did three months and some days  
in jail for.

B. Ground Two: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

C. Ground Three: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

D. Ground Four: \_\_\_\_\_

Supporting Facts: \_\_\_\_\_

15. If any of the issues that you are raising in this motion have not been previously presented, explain which issues are being raised for the first time and why.

The issue is being raised because of the newly  
handed down Simmons' law.

16. Do you have any other sentence(s) to be served after you complete the sentence(s)/commitment that is being challenged in this petition?

Yes ☒ No ☐

If you answered yes, provide the following information about each of your future sentences:

A. Name and location of the court that imposed the sentence.

Circuit Court of Balto City 100 N. Calvert St 21202

B. Length of the sentence. 8 years with 386 days credited

C. Have you filed, or do you intend to file, a petition or motion attacking this sentence?

Yes ☒ No ☐

WHEREFORE, Movant prays that the Court grant him/her all relief to which he/she may be entitled in this action.

**I DECLARE UNDER THE PENALTIES OF PERJURY THAT THE INFORMATION ABOVE IS TRUE AND CORRECT.**

SIGNED THIS 13th day of September, 2013.

Kevin Wayne Gary  
(original signature of movant)

F.C.I. McDowell

P.O. Box 1009

Welch, WV 24801

(address of movant)